

140A BURDEN OF PROOF: FORFEITURE ACTIONS

In reaching your verdict, examine the evidence with care and caution. Act with judgment, reason, and prudence.

The burden of establishing every fact necessary to constitute guilt is upon the (State) (City) (County) of _____. Before you can return a verdict of guilty, you must be satisfied to a reasonable certainty by evidence which is clear, satisfactory, and convincing that the defendant is guilty.

Clear, satisfactory, and convincing evidence is evidence which when weighed against that opposed to it clearly has more convincing power. It is evidence which satisfies and convinces you that the defendant is guilty because of its greater weight and clear convincing power.

"Reasonable certainty" means that you are persuaded based upon a rational consideration of the evidence. Absolute certainty is not required, but a guess is not enough to meet the burden of proof.

COMMENT

This instruction replaced Wis JI-Criminal 2050 (81962) in 1993. It was revised in 1998 to update the Comment. It was republished without substantive change in 2000 when it was renumbered from Wis JI-Criminal 140.1 to 140A. This revision was approved by the Committee in October 2010. It added the last two paragraphs, which are adapted from Wis JI-Civil 205.

This instruction is intended for use as part of the general instructions immediately following the instruction on the offense charged. Instructions are published for several forfeiture actions, primarily for traffic offenses. A model for offenses not covered by published instructions is also provided, see Wis JI-Criminal 2680.

The suggested order of instructions for forfeiture actions is as follows:

- Wis JI-Criminal 100 – OPENING INSTRUCTIONS (First paragraph only)
- 110 – ONE DEFENDANT: SINGLE COUNT: NO INCLUDED OFFENSE
- _____ – [INSTRUCTION ON OFFENSE CHARGED]
- 140A – BURDEN OF PROOF: FORFEITURE ACTIONS
- 190 – WEIGHT OF EVIDENCE
- 300 – CREDIBILITY OF WITNESSES
- 460 – CLOSING INSTRUCTION
- 480 – VERDICTS SUBMITTED FOR ONE DEFENDANT: SINGLE COUNT
- 515A – FIVE-SIXTHS VERDICT AND SELECTION OF PRESIDING JUROR:
FORFEITURE ACTIONS

The "clear, satisfactory, and convincing" standard applies to forfeiture actions involving acts which are also made criminal by state statute. See City of Milwaukee v. Wilson, 96 Wis.2d 11, 21-22, 291 N.W.2d 452 (1980). The same standard applies to all municipal ordinance violations tried in municipal court, see § 800.08(3). Apparently, an ordinance violation with no criminal counterpart, tried in circuit court, may require only the regular civil burden of proof. There appears to be no logical reason for this anomaly.